

DATE: January 24, 2005

TO: Gerald M. O'Brien, Chair
Howard D. Poulson, Vice-Chair
Stephen D. Willett (Air, Waste and Water Management/Enforcement Committee)

FROM: Scott Hassett

SUBJECT: Background Memo Relating to Proposed Modifications to NR 500 Series Related to Streamlining and Public Hearings

1. Why The Rule Modifications Are Being Proposed

The proposed revisions to the NR 500 series will streamline existing codes to make the preparation, submittal and review of documents related to solid waste management more efficient. The Department met seven times with a Streamlining Workgroup of externals and internals over a two-year period (Dec. 2002 to Dec. 2004) to develop recommendations for ways to reduce transactional costs for our stakeholders and to streamline the way the solid waste program does business. These recommendations were incorporated into draft code changes that were presented at a public meeting on October 26, 2004 to secure additional stakeholder input into the process.

2. Summary of the Proposed Rule Revisions

The majority of the proposed rule revisions address streamlining changes. Additional code changes are included to a) correct errors in the code, b) clarify the procedure when an exemption is needed for a private well located within 1200 feet of a landfill and when a variance is needed under NR 812 for the private well, and c) add requirements for geosynthetic clay liners (GCLs) that are currently in standard approvals and d) make changes to the medical waste rules to clarify how the rules apply to different wastes and generators. A brief description of the proposed rule changes follows:

a. Expanding Expedited Plan Modifications

The expedited plan modification process, first codified in 1996, has worked well for both the Department and its stakeholders, so we are proposing to further expand their scope for landfill plan modifications and to extend the concept to non-landfill plan modifications and non-liner landfill construction documentation submittals.

b. Expanding Beneficial Use

These proposed rule changes will make the self-implementing aspects of NR 538 applicable to more waste streams and to mixtures of waste streams. The proposed changes will also establish a minimum vertical separation distance between beneficially used material and groundwater and the minimum horizontal distance to water supply wells. The need for these locational standards has become evident in the Department's day-to-day implementation of the Beneficial Use Program.

c. Making Lower-Risk Non-Landfill Facility Approvals Self-Implementing

We have proposed making the process of establishing containerized waste storage facilities and smaller

transfer stations largely self-implementing. This change is proposed in recognition of the relative lower-risk of these facilities and staffing reductions that the Waste Program has experienced in recent years.

d. Improving Landfill Feasibility Completeness Determinations Process

Code wording to clarify Feasibility Determination requirements are proposed. Changes are also proposed to provide discretion to Department staff in certain portions of NR 512 with respect to making decisions on the completeness of feasibility reports under review.

e. Addressing Existing Conditions of Approval in Plan of Operations for Landfill Expansions

Most landfill siting proposals which the Department receives are to expand existing landfills rather than to establish new landfills. Since existing landfills have gone through Wisconsin's landfill siting process previously, they have formal approvals from the Department with written conditions of approval. Determining which of these existing conditions of approval apply to the landfill expansion has historically been a gray area and a source of confusion for the Department and its stakeholders. These proposed rules establish a mechanism to resolve this confusion.

f. Reducing the Scope of Landfill Manager/Operator Certification Requirements

In recognition of the staffing reductions that the Waste Program has experienced in recent years, the Department is proposing to reduce the scope of the Landfill Manager/Operator Certification Program. Landfill managers and operators will still be required to pass an exam administered by the Department and become certified; however, the Department will no longer be involved in providing or approving training programs or in regular review of continuing education hours. The proposed changes to NR 524 are consistent with s. 289.42, Stats.

g. Clarifying Borrow Soil Testing and Submittal Requirements

These proposed changes will clarify current code wording relating to use of commercial borrow sources. Because similar-looking fine-grained soils can have significantly different physical properties, care must be taken when soil from multiple non-landfill related construction projects are used for landfill construction.

h. Clarifying language referring to private well variances and exemptions near landfills

The Department has identified inconsistencies in the application of Chapter NR 812.43(1), which specifies that a well owner must request a variance to the 1200-foot setback requirement between a proposed landfill and existing water supply wells. In addition, the locational criteria in NR 504.04(3) require a 1200-foot setback to existing public and private water supply wells. The proposed language will resolve these inconsistencies.

i. Adding GCL, Geomembrane, and Aggregate Items to the rules

The proposed code revisions integrate into the NR 500 codes a number of requirements for Geosynthetic Clay Liners (GCLs) and other materials of construction which have become standardized in the review process.

j. Clarifying Medical Waste Rules

The proposed revisions clarify who has to follow WI Dept. of Transportation rules and who must follow DNR rules based on recent adoption of federal DOT rules regulating medical waste transportation. The proposed revisions also clarify definitions of terms and other items in the rules that have confused the public, such as the definition of amalgam waste and radioactive waste and transportation licensing and blood collection vehicle exemptions.

k. Minor Fee Increases

The proposed code revisions include minor fee adjustments. These adjustments to NR 520 Tables 2 and 3 involve adding minor fees for several plan review related activities not addressed in past rule making efforts. Other minor changes are proposed to better match Department time expenditures on certain activities related to plan review and licensing with the fees assessed.

3. How This Proposal Affects Existing Policy

The proposed changes expand the type of facilities that can apply for an expedited plan modification, broaden the self-implementing aspects of NR 538 to more waste streams and to mixtures of waste streams, allow self-implementing approvals for lower-risk non-landfill facilities, and increase the flexibility for Department staff reviewing landfill feasibility reports. In addition, under the proposed rules the Department will no longer be involved in providing or approving training programs or in regular review of continuing education hours related to operator certification. The Department has added requirements that will affect landfill owners intended to assure the quality of soil from multiple non-landfill related construction projects being used for landfill construction. Requirements for GCL membranes that will also affect landfill owners have been added to the code to reflect what is currently required in conditions of approvals. The Department has also proposed changes to allow either the landfill owner or the private well owner to apply for a variance for a well to be constructed within 1200 feet of a landfill. Changes within the Medical Waste rule (NR 526) will allow blood collection vehicles to haul infectious waste without having to be licensed as infectious waste transporters, similar to the exemption that already exists for ambulances and first responders. In addition, other changes specify that if there are conflicts between DNR rules and USDOT rules, the USDOT rules pre-empt ours.

4. Past Board Involvement

In 1988, Wisconsin revised and promulgated its solid waste rules (chs. NR 500 to 520, Wis. Adm. Code). In 1996, Wisconsin further revised and promulgated its solid waste rules (chs. NR 500 to 590 Wis. Adm. Code). In June 2004, the board approved hearings for the revisions to NR 500 (landfill leachate lines and increased stability) and in September 2004, the board approved hearings for modifications to NR 500 series related to recycling. This is the first streamlining proposed for this rule.

5. Who Will Be Affected By The Proposed Rule

The rule changes will principally affect organizations that build and operate landfills such as Waste Management of Wisconsin, Inc., Onyx Waste Services, Inc., Republic Services, Inc., Browning Ferris, Inc., industries such as papermills, utilities, foundries and counties that own and operate landfills. The proposal will streamline various processes for landfill applicants and staff reviewing the applications. The proposal will simplify the process for facilities applying for expedited plan modifications and exemptions for beneficial use and obtaining approvals for low-risk non-landfill facilities. For those constructing a landfill liner, the requirements for soil borrow and membrane liners will be consolidated and clearer. Both landfill owners and private well owners will be able to apply for a variance to install a well within 1200 feet of a landfill (previously only the private well owner could apply). Applicants wishing to expand a landfill, will now know what previous conditions apply at the proposed site. Medical waste

facilities will have clearer definitions to work with and infectious waste transporters will be granted an exemption similar to what ambulances currently obtain.

6. Small Business Analysis

We do not anticipate that this proposal will impact small businesses.

7. Environmental Analysis

Under the provisions of s. NR 150.03(6)(b)3.b. Wis. Adm. Code, Environmental Analysis and Review Procedures for Department Action, this is a Type III action, since the implementation will not have material adverse impacts on the human environment, and the Department has limited discretion in formulating important provisions of its rules. Therefore, the Waste Management program concludes and the Department's Integrated Science Services program [who are responsible for WEPA compliance] confirm that under s. NR 150.03(6)(b)3.b., an environmental assessment is not required.